In the language of *Neild v. District of Columbia,* 110 F. 2d 246, 254:

> "The rule is well settled that unless the contrary plainly appears a statute operates prospectively only (*Cox v. Hart,* 260 U. S. 427, 434, 43 S. Ct. 154, 67 L. Ed. 332; *Big Diamond Mills Co. v. United States,* 8 Cir., 51 F. 2d 721, 726.) See generally, Smead, The Rule Against Retroactive Legislation· A Basic Principle of Jurisprudence, 20 Minn. L. Rev. 775, 778 *et seq.*) ; in other words, 'that a statute ought not to be construed to operate retrospectively in the absence of clear, strong, and imperative language commanding it' (*Home Indemnity Co. v. Missouri,* 8 Cir., 78 F. 2d 391, 394. See also, *United States v. Heth,* 3 Cranch, U. S. 399, 413, 2 L. Ed. 479; *Union Pacific Co. v. Laramie Stock Yards Co.,* 231 U. S. 190, 34 S. Ct. 101, 58 L. Ed. 179; *Jones v. Fidelity & Columbia Trust Co.,* 6 Cir., 73 F. 2d 446) ; and if a double sense is possible that which rejects retroactive operation must be selected. (*Shwab v. Doyle,* 258 U. S. 529, 535, 42 S. Ct. 391, 66 L. Ed. 747, 26 A. L. R. 1454.)"

Furthermore, even if Section 303 were given a retroactive effect, it would avail Petitioners nothing since threats of economic reprisals by way of strike or otherwise by a labor organization to an employer group do not constitute a violation of said section. (*Humphrey v. Teamsters' Union* (D. C. N. Y.), 25 LRRM 2318; *In re Electrical Workers,* 82 NLRB No. 132; *In re Teamsters' Union,* 87 NLRB No. 130; *In re Spokane Building and Trades Council,* 89 NLRB No. 141.)

(7) The Gravamen of Petitioner's First Cause of Action Is That the Employer Respondent in Conspiracy With Labor Respondent Committed Unfair Labor Practices.

The burden of Petitioner's Complaint, as set forth in its First Cause of Action, is that the Employer Respondents in conspiracy with Labor Respondents committed unfair labor practices against Petitioner and its members as follows:

(a) Petitioner's members were discharged at a time when Petitioner had a closed-shop contract with the Employer Respondents covering the employment of its members, because such members were affiliated with Petitioner and were not either members of Labor Respondent The International Alliance, etc., or permittees of it;

(b) Petitioner's members were "locked out" because of their affiliation with Petitioner at a time when it is alleged a valid contract for their employment existed, without such contract having been terminated as provided by law; and

(c) Employer Respondents have refused to bargain with Petitioner as the bargaining agent of its members.

It is alleged in the First Cause of Action (1) that Petitioner, as the bargaining representative of its members, negotiated and entered into certain collectively bargained contracts—to which contracts Labor Respondents were, of course, not parties—and that said contracts have never been terminated; (2) that the "employer defendants with the intent and purpose of depriving plaintiff's members of the employment, and benefits of said collectively bargained agreements, and of their work tasks pursuant to their terms, by means of an unlawful confederation, each with

the other, during or about March, 1945, agreed between themselves, and with the defendant IATSE, that they would take all carpentry work tasks in all of their respective studios from plaintiff's members and transfer the same to members or permittees of defendant IATSE" [Par. XI, Amended Complaint, R. 44-45]; (3) that on or about August 22, 1946, Labor Respondent The Alliance made certain threats and demands "to coerce the employer defendants, and require them to so replace all of plaintiff's members with IATSE members and permittees in carpentry work," and that the Employer Respondents agreed "to deprive all of plaintiff's members of all carpentry work tasks in all of said studios, and to replace them exclusively with members or permittees of defendant IATSE" [Pars. XIV and XV, Amended Complaint, R. 46-47]; (4) that "on or about September 23, 1946, in pursuance of said conspiracy, said employer defendants uniformly ordered all of plaintiff's members then at work to discontinue their work tasks, and immediately leave and depart from said studios and premises of the employer defendants, in a *mass lockout* of all of plaintiff's members"; (5) that all of Petitioner's members were *locked out* and the Employer Respondents employed members of Labor Respondents The International Alliance, etc., and its permittees, exclusively, in all carpentry work tasks in the studios and maintained "a blacklist against plaintiff's members from that date to this"; (6) that "ever since said *mass lockout* on or about September 23, 1946, employer defendants, and their said Association, *have refused to bargain with plaintiff as the bargaining agent of its members*"; and (7) that "by the aforesaid unlawful acts and doings, defendants *have caused plaintiff's* MEMBERS *to be deprived of their work tasks,* and eligibility for the same,

under said contracts down to the present time" [Pars. XVI, XVII, XVIII, and XIX, Amended Complaint, R. 47-48].

The above allegations, constituting as they do the gravamen of Petitioner's First Cause of Action, set forth unfair labor practices under both the National Labor Relations Act (Wagner Act) and Labor-Management Relations Act, 1947 (Taft-Hartley Act), as follows:

(1) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of both Acts, which said Section 7 guarantees to employees the right of self-organization, to join or assist labor organizations, and to engage in other concerted activities for the purpose of collective bargaining (Sec. 8(a)(1), Wagner Act, *id.*, Taft-Hartley Act);

(2) "Discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" (Sec. 8(a)(3), Wagner Act, *id.*, Taft-Hartley Act); and

(3) Refusal to bargain collectively with Petitioner as the representative of its members, alleged employees of Employer Respondents (Sec. 8(a)(5) Wagner Act, *id.*, Taft-Hartley Act).

Petitioner on several occasions in the First Cause of Action, in conclusory fashion, refers to the conduct of the Respondents—which we have immediately hereinbefore

epitomized—as violations of contracts to which the Employer Respondents are alleged to be members. We submit, however, that such conduct constitutes unfair labor practices, and in this respect Petitioner is in the same position as was the labor organization, plaintiff in *United Packing House Workers, etc. v. Wilson and Co.*, 80 Fed. Supp. 563. That was an action brought, as the decision states, "under the provisions of Section 301(a) and Section 301(b) of the Labor-Management Relations Act, 1947." Plaintiff alleged in the complaint therein the existence of a collective bargaining agreement with the defendant and set forth a series of alleged violations of such contract, consisting of a failure and refusal to engage in collective bargaining, a failure to pay sick benefits, a failure to grant striking employees vacations with pay, a failure to abide by seniority provisions, a failure to adjust grievances, and a failure to deduct and pay over dues to the union. The court said, at page 566 of 80 Fed. Supp., after pointing out that it was clear from the complaint that all the things complained of by the plaintiff arose out of a labor dispute, as follows:

> "The gravamen of the complaint is that defendant committed unfair labor practices."

And stated further on page 569, as follows:

> "Plaintiffs, by their amended complaint, attempt to characterize the unfair labor practices complained of as 'contract violations' and thereby circumvent the plain mandate of Congress that jurisdiction of such matters be vested exclusively in the National Labor

Relations Board and that Federal trial courts are without jurisdiction to redress by injunction or otherwise unfair labor practices."

Since, as clearly appears, the alleged acts of the Employer Respondents, as alleged in the First Cause of Action, constitute unfair labor practices, despite Petitioner's characterization of same as "contract violations," we are now brought to a consideration of the question of whether the District Court had any jurisdiction whatsoever over the subject matter of said First Cause of Action, even if it should be held that the numerous other objections hereinbefore urged by us to such jurisdiction are without merit.

(8) District Courts Have No Jurisdiction to Grant Relief in Any Form for Violations of the Wagner Act or the Taft-Hartley Act Constituting Unfair Labor Practices; Jurisdiction With Respect to Such Matters Is Vested Exclusively in the National Labor Relations Board.

In the *Amazon Cotton Mill Co.* case (167 F. 2d 183), the plaintiff labor union instituted an action alleging that the defendant employer with which it had a collectively bargained contract had violated such contract by refusing and failing to bargain collectively with the plaintiff, had refused to recognize plaintiff as bargaining agent, had interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist a labor organization, etc., and sought damages in the sum of $500,000.00 to be awarded plaintiff and

those employees of the defendant therein whom plaintiff represented (76 Fed. Supp. 159-160). The lower court denied a motion to dismiss, which motion was made upon the ground that the National Labor Relations Board had exclusive jurisdiction. The lower court, however, held that it had jurisdiction under Section 301(b) of the Taft-Hartley Act. On appeal to the United States Court of Appeals for the Fourth Circuit, Judge Parker, speaking for that court, reversed the lower court.

We quote from Judge Parker's decision as follows:

> "We think it clear that the District Court had no jurisdiction of the case. Unless the Labor Management Relations Act of 1947, 29 U. S. C. A., Sec. 141 *et seq.*, has had the effect of clothing each of the more than two hundred District Judges of the country with the powers over unfair labor practices vested in the National Labor Relations Board, . . . We do not think that the Labor Management Relations Act was intended to have or does have that effect." (Pp. 185-186.)
>
> ". . . The jurisdiction of the courts over labor disputes was still further limited by the National Labor Relations Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. A., Section 151 *et seq.*, which guaranteed the right of collective bargaining to employees engaged in industry affecting interstate commerce, defined unfair labor practices on the part of employers and set up the National Labor Relations Board to supervise collective bargaining and protect employees in the exercise of rights guaranteed by the Act from

unfair labor practices on the part of their employers. It is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quasi-judicial authority in connection with the development of federal American law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction *or otherwise* the unfair labor practices which it defined. (Citing cases.)" (P. 186.)

The most important statement made by Judge Parker, so far as the present point under discussion is concerned, is contained in the last paragraph of his opinion, which reads as follows:

"For the same reason that plaintiff may not maintain the suit for injunction to restrain the *unfair labor practice, it may not maintain the action to recover damages on account thereof. Recompense of lost wages on account of an unfair labor practice is a matter for the Labor Board.* See Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177, 194, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217; International Union etc. v. Eagle Picher Co., 325 U. S. 325, 340, 65 S. Ct. 1166, 89 L. Ed. 1649; Wallace Corp. v. N. L. R. B., 4 Cir., 159 F. 2d 952." (Pp. 190-191.)

There is a bead-roll of authorities sustaining the rule that the exclusive power to grant relief, either by way of recompense for lost wages or otherwise, resulting from unfair labor practices, is vested in the National Labor Relations Board and in the District Courts of the United States. Among such cases are *Phelps Dodge Corp. v. National Labor Rel. Bd.*, 313 U. S. 177, 85 L. Ed. 1271, and *International Union v. Eagle Picher, etc.*, 325 U. S. 335, 85 L. Ed. 1649. The latest word on this subject comes from the United States Court of Appeals for the Ninth Circuit when, in *California Association of Employers, etc. v. Building and Constructions Trades Council of Reno, etc., et al.*, 178 F. 2d 175, it stated:

> "The Labor Management Relations Act, 61 Stat. 136, made numerous changes in the Administration of the Act it amended, but these changes do not affect the results herein. See: *Amazon Cotton Mill Co. v. Textile Workers Union,* 4 Cir., 167 F. (2d) 183; *Amalgamated Association, etc., v. Dixie Motor Coach Corp.*, 8 Cir., 170 F. (2d) 902; *Bakery Drivers Union v. Wagshal,* 333 U. S. 437. These cases dealt directly with injunctions, but the analyses made and the reasons advanced control here. None of the changes gave private litigants additional rights to invoke the direct aid of the District Courts to prevent unfair labor practices. *The Board retains its exclusive primary jurisdiction* (except as to authorized cessions to qualified state agencies, 29 U. S. C. A., Section 160(a), as amended) *over the administration of the Act where the defined unfair labor practices are at issue.*"

II.

Second Cause of Action of Amended Complaint Fails to State a Claim Upon Which Relief in Favor of Petitioner Can Be Granted; District Court Lacked Jurisdiction Over the Subject Matter of Said Cause of Action.

Since diversity of citizenship is not alleged and its absence affirmatively appears, the District Court had no jurisdiction of the Second Cause of Action under the Federal statute which vests jurisdiction in District Courts where the requisite amount in controversy and diversity of citizenship exists. It is Petitioner's contention, as set forth in Paragraph I of the Second Cause of Action [R. 49], that the District Court had jurisdiction over the subject matter of said Second Cause of Action under the Fifth and Fourteenth Amendments to the Constitution, the Civil Rights Act, the Social Security Act, the National Labor Relations Act, and the Labor-Management Relations Act, 1947. In other words, Petitioner insists that by the Second Cause of Action it is asserting the violation of a right guaranteed by or arising out of the Constitution or laws of the United States. The *First Schatte Case* has unequivocally disposed of such contentions of Petitioner adversely to it.

Petitioner asserts that Section 301(a), LMRA, gives aggrieved employees a right of action for the violations of collectively bargained contracts to which, as Petitioner says, they have become parties, and in support of such assertion cites and quotes from *Gattliff Coal Co. v. Cox,* 142 F. 2d 876. The cited case in no manner supports Petitioner's contention even if such contention were germane to the question now before this court. It did not

arise under the National Labor Relations Act; it was an action brought to recover overtime compensation under the Fair Labor Standards Act. Diversity of citizenship existed. Neither Section 301 nor any other section of the National Labor Relations Act is referred to in the opinion. Plaintiff in that action sought to recover overtime compensation for services rendered during a period of time in which he was actually employed, and in order to determine the rate of compensation to which he was entitled it was necessary to make reference to a collectively bargained contract that had been entered into between the employer and the labor organization of which plaintiff was a member. Plaintiff was suing under the Fair Labor Standards Act to recover an amount alleged to be due him pursuant to that law and at a rate of pay for services actually performed, set forth in the collectively bargained agreement. Obviously, there is no similarity between the *Gatliff Coal Co.* case, in which plaintiff sued on his own behalf as an employee to recover compensation due him by operation of the express terms of the Fair Labor Standards Act and the terms of a contract, and the instant action, wherein Petitioner is a labor organization seeking to recover damages alleged to have been sustained by its members after they ceased to work, based on an alleged breach of contract—not a contract of hiring with the employee members, but a collectively bargained closed-shop contract.

Petitioner advances the argument that Petitioner's *members* are entitled to relief for a violation of the collectively bargained contracts relied upon in this action and cites the case of *Yazoo & M. V. R. Co. v. Webb,* 64 F. 2d 902. This case, like the *Gatliff Coal Co.* case,

in no way concerns the issue now before this court, namely, whether District Courts of the United States, in actions such as the instant one, have jurisdiction. Although it does not appear from the opinion, it is a fact, as we ascertained by procuring a copy of the pleadings, that diversity of citizenship existed in the *Yazoo* case, and, as in the *Gatliff Coal Co.* case, the plaintiff in the *Yazoo* case was suing for compensation for services actually performed under a contract of hiring and it was necessary to refer to a collectively bargained contract in order to determine his rate of compensation and the classification in which he properly belonged.

Conclusion.

Respondents The International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada and Roy M. Brewer respectfully pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

HENRY G. BODKIN,
GEORGE M. BRESLIN,
MICHAEL G. LUDDY,

Attorneys for Labor Respondents The International Alliance, etc., and Roy M. Brewer.

APPENDIX "A."

The following is a portion of the Reporters' Transcript of Proceedings at the time the motions to dismiss were argued:

"Now, in connection with your amended complaint in the studio union, wherein does this differ, Mr. Cobb, from the complaint which was previously filed and on which I ruled in accordance with the memorandum filed on May 27th?

Mr. Cobb: The complaint in this case is an action by the Local union as representative of its members, under the jurisdiction of Section 301 of the Taft-Hartley Act, and for damages.

* * * * * * * * *

The Court: You are seeking only damages?

Mr. Cobb: Seeking damages for and on behalf of the members; a suit by the union as representative of its members.

The Court: Under 301 of the Taft-Hartley Act?

Mr. Cobb: That is correct.

The Court: And not under the antitrust laws?

Mr. Cobb: There is a second count there. That is under the Constitution." [R. 99-100.]

* * * * * * * * *

Mr. Cobb: * * * We are not quibbling on the proposition. This case stands on what is due the members. We are not after what dues the local lost by it.

The Court: In other words, there is no effort on the plaintiff's part here to assert any damages to the union as an entity distinct and separate from the membership?

Mr. Cobb: That is correct.

The Court: I don't think Section 301 grants that jurisdiction in this court; and the motion to dismiss the complaint in 8864 will be granted. [R. 104.]

The Court: Well, I read this through; I can't see it. I am prepared now to rule that the complaint does not state a claim for relief under the Social Security Act, the Civil Rights Act, the Fourteenth Amendment or the Fifth Amendment.

Now, that leaves for consideration the question as to whether or not the Taft-Hartley Act, Section 301, construed in connection with Sections 1331, 1337 and 1343 of the Judicial Code, grants relief or grants this court jurisdiction.

Mr. Cobb: Now the first cause of action that is alleged is under the jurisdiction of Section 301 of the Taft-Hartley Act.

The Court: What are the damages here? I read the complaint through.

Mr. Cobb: The damages are damages suffered by the individual members in being deprived of work tasks, and the same as to all members of the local employed by all the defendants, as alleged.

The Court: What is your authority that the union can file a suit for damages to its members rather than the union as an entity?

Mr. Cobb: What?

The Court: What is your authority for the proposition that under Section 301 the union can file a suit for damages on behalf of each individual member, rather than a

suit on behalf of the union itself for injury to the union as an entity distinguished from its members?

Mr. Cobb: Section 301, paragraph (b), the second sentence. Has your Honor that before you?

The Court: Yes. 'Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States.'

Mr. Cobb: 'And in behalf of employees.'

The Court: 'In behalf of the employees' is the one that confers jurisdiction, if anything does.

Mr. Cobb: That is the jurisdiction.

The Court: What have you got to say about it? Has that been construed by any cases?

Mr. Cobb: I don't think so." [R. 101-102.]